Supreme Court, U.S.
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No. 00-1749

IN THE

Supreme Court of the United States

NATURAL PARENTS OF J.B.,

Petitioners,

v.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

REPLY BRIEF

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I. THE RESPONDENT'S BRIEF FAILS TO RECOGNIZE THE FUNDAMENTAL RIGHTS OF THE NATURAL PARENTS THAT ARE AT STAKE IN A STATE-INITIATED PROCEEDING TO TERMINATE PARENTAL RIGHTS

The Respondent, the Florida Department of Children and Family Services [the State], writes that "[t]his is a juvenile case." (Br. in Opp., p. 3). It is not. Minors adjudicated delinquent in juvenile court get their liberty back. Parents who lose a parental termination case never get their child back.

In *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), this Court recognized that "parental termination decrees are among the most severe forms of state action." *Id.* at 128.

> The object of the proceeding is "not simply to infringe upon [the parent's] interest," . . . "but to end it"; thus, a decision against the parent "work[s] a unique kind of deprivation."

Id. at 118 (*quoting Lassiter*, 452 U.S., at 27). *See also Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982) (describing the parents' interest as "an interest far more precious than any property right"); *M.L.B. v. S.L.J.*, 519 U.S. 102, 121 (1996) ("parental status termination is 'irretrievabl[y] destructi[ve]' of the most fundamental family relationship") (*quoting Santosky,* 455 U.S. at 753).

The State's simplistic view that this is just "a juvenile case" is based upon the fact that a termination of parental rights proceeding in Florida is brought under Chapter 39, Florida Statutes, entitled "proceedings related to children,"

and the Florida Rules of Juvenile Procedure apply. (Br. in Opp., p. 3 n.6). But just as cases litigated under the Rules of Civil Procedure may differ in the interests at stake, the various proceedings governed by the Rules of Juvenile Procedure (delinquency, dependency, termination of parental rights, proceedings for families in need of services, guardian advocates for drug dependent newborns) also differ in the interests at stake. The State's view that closure of some juvenile proceedings justifies the closure of *all* "juvenile" proceedings exalts a label, not a principled assessment of the liberty interests at stake. This Court has rejected the notion that labels drive legal analysis. *Compare*, *Breed v. Jones*, 421 U.S. 519, 529 (1975) ("[I]t is clear under our cases that determining the relevance of constitutional policies, like determining the applicability of constitutional rights, in juvenile proceedings, requires that courts eschew 'the "civil" label-of-convenience which has been attached to juvenile proceedings,' *In re Gault*, . . . 387 U.S. at 50 . . . and that 'the juvenile process . . . be candidly appraised.' 387 U.S. at 21 . . . .").

Respondent contends that the open judicial proceedings precedents relied upon in the petition are "inapplicable" because they arose out of criminal proceedings, and this is not a criminal case. (Br. in Opp., p. 4 and n.8). But the Court in *M.L.B. v. S.L.J.* recognized that a parent subjected to termination of parental rights is not unlike a defendant subjected to termination of liberty in a criminal proceeding: "Like a defendant resisting criminal conviction, [M.L.B., the mother contesting a TPR proceeding] seeks to be spared from the State's devastatingly adverse action." 519 U.S. at 125. Thus, the open criminal proceedings cases provide constitutionally relevant analogies that may inform this Court's decision to grant review of a decision that bolts the

door to the courtroom and insulates all termination of parental rights proceedings from the public.[1]

II. THE RESPONDENT'S RELIANCE ON THE CLOSURE OF "JUVENILE JUSTICE" PROCEEDINGS IS MISPLACED

The State asserts that "[t]he Florida Supreme Court's decision is consistent with this Court's precedent and it should not be disturbed." (Br. in Opp., p. 3). However, the State does not cite a single decision from this Court in support of that statement. Nor is there a case cited in the entire Brief in Opposition favoring a mandated closure of any judicial proceedings. There is no such decision.

As did the court below (Pet. Cert. App. 7a), the State quotes from then-Justice Rehnquist's concurring opinion in *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 107 (1979), which noted that juvenile justice proceedings are historically "shielded from publicity." The context of the quoted material, however, is in a lengthy discussion of the concerns for protecting a minor charged with a criminal offense, and has no relevance to a termination of parental rights proceeding. *See id.* (Rehnquist, J., concurring) ("This insistence on confidentiality is born of a tender concern for the welfare of the child, to hide his youthful errors and bury them in the graveyard of the forgotten past.") (internal quotations omitted). The concurrence was interesting, but the holding

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1. In protecting an indigent mother's right to have a transcript to appeal a termination of parental rights decree, *M.L.B.* used the same metaphor: "[W]e place decrees forever terminating parental rights in the category of cases in which the State may not "bolt the door to equal justice," *Griffin*, 351 U.S. at 24, 76 S. Ct. at 593 (Frankfurter, J., concurring in judgment). . . ." 519 U.S. at 123.

of the case was that the state could not criminally punish the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper. *Smith v. Daily Mail Pub. Co.*, 443 U.S. at 105-06. Thus, despite the important interests articulated in the concurrence, the Court favored the First Amendment over the State's asserted interest in the confidentiality of juvenile proceedings. If anything, *Daily Mail* supports certiorari in this case.

The only other case cited by the State is *Schall v. Martin*, 467 U.S. 253 (1984), another case involving juveniles charged with criminal offenses. *Schall's* comment that the practices of states are "plainly worth considering" in constitutional analysis, 467 U.S. at 268, aids the Petitioners' request for certiorari. Florida's statutorily mandated *per se* closure of all parental termination proceedings is inconsistent with the practices of 47 other states. *See* Pet. Cert., pp. 9-10, nn.5-9. Whether the Florida practice offends constitutional principles is a question worthy of this Court's review.

CONCLUSION

For the foregoing reasons, and those advanced previously, the petition for writ of certiorari should be granted.

Respectfully submitted,

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